Relations industrielles
Industrial Relations

Juridical Extension in Québec. A New Challenge Unique in North America

Jean Bernier

Volume 48, numéro 4, 1993

URI : https://id.erudit.org/iderudit/050898ar
DOI : https://doi.org/10.7202/050898ar

Aller au sommaire du numéro

Éditeur(s)

Département des relations industrielles de l'Université Laval

ISSN

0034-379X (imprimé)
1703-8138 (numérique)

Découvrir la revue

Citer cet article

Bernier, J. (1993). Juridical Extension in Québec. A New Challenge Unique in North America. *Relations industrielles / Industrial Relations*, *48*(4), 745–761. https://doi.org/10.7202/050898ar

Juridical Extension in Québec
A New Challenge Unique in North America

Jean Bernier

This paper examines a system of extending collective agreements to non-unionized parts of an industry which is unique in North America and specific to Québec. It was established in the early 1930's, i.e. during the economic crisis that led many other countries in a similar direction during the same era. This idea was brought from Europe by Father Boileau who was then a chaplain of the C.T.C.C. (Confédération des travailleurs catholiques du Canada) which became the C.S.N. (Confédération des syndicats nationaux) in 1960. Father Boileau and the C.T.C.C. put pressure on the government and convinced the late Gérard Tremblay, who was then Deputy-Minister of Labour, that such a system would be good for workers as well as for employers. The legislation was passed in 1934. It is still in force almost sixty years later and it seems to continue to function to the satisfaction of the interested parties. It has not been amended in any important manner since it was passed.

The system was first conceived as a way to stimulate collective bargaining and to promote good relations between employers and employees in a spirit of labour-management cooperation. The essence of the procedure is to allow government to make some provisions of a collective agreement compulsory for third parties, employers and wage-earners who are not parties to the agreement. The government is empowered to do so by way of what the Act[1] calls a decree (order-in-council). In other words, under this system, the government may take the result of collective negotiations between a group of employers and a union (or a group of unions) and apply certain provisions of this agreement to all employers and all employees in a given industry and a given region.

One must remember that this system was enacted long before the *Labour Relations Act* (which was adopted in 1944 and then became the Québec *Labour*

* BERNIER, J., Professor, Department of Industrial Relations, Université Laval.

** The author expresses his most sincere thanks to his colleague and friend Anthony Giles, Professor at the Department of Industrial Relations, Université Laval, in finalizing the English version of this text.

1 *An Act Respecting Collective Agreement Decrees,* R.S.Q., c. D-2.

Code in 1964). Indeed, this regime is completely different from the one which is defined in the *Labour Code*[2] and which is established on the principle of the exclusive representation granted to the majority union in a given firm (or a part of it) through the mechanism of union certification.

When it was created in the early 1930's, the system was assigned two main goals, one of a social nature, the other of an economic nature. On the social side, it was aimed at encouraging collective bargaining and allowing a larger number of workers in non-unionized firms to benefit from the superior conditions of work and employment negotiated in collective agreements, conditions they probably would not have been entitled to otherwise. From the economic point of view, it was aimed at reducing the so-called "disloyal or unfair" competition among firms operating in the same field of activity by focussing competition on factors other than wages and conditions of work. Some also saw other objectives, like the promotion of the participation of employers and employees in the organization of industry, the responsibility or the social accountability of the parties and so-called "social concertation".

In this paper, I intend, first, to describe the main components of the system as it exists in Québec and, second, to discuss a certain number of questions and issues raised by the existence of this type of broader-based collective bargaining.

THE QUÉBEC REGIME OF JURIDICAL EXTENSION

Before describing the regime, it will be useful to present a brief picture of who is covered by the system of juridical extension.

The Sectors and the Main Actors

First, in which sectors of activity do we find these extended agreements today? As can be seen in Table 1, we find them chiefly in low-wage sectors characterized by a large number of small and medium-size firms in highly competitive markets.

It might be added that, in the past, some other sectors were covered by extended agreements (e.g. printing, shoes, tanneries, retail stores, grocery stores, wholesale, bedding, upholstering) but the decrees in those sectors have not been renewed, or have been simply repealed by the Minister of Labour, for a number of reasons. Despite the fact that many such extended agreements have disappeared, it must be noted that the number of employers and employees covered by decrees has remained rather stable for the past twenty years. This can be explained by the fact that as the more traditional trades in the manufacturing sector were covered less and less by the system, the regime of

2 *Labour Code*, R.S.Q., c. C-27.

extended agreements was developing quite rapidly in new sectors, mainly in the services with the unionization of security guards, building services, solid waste and a few others like installation of petroleum equipment.

TABLE 1

Industries Covered by Decrees
1992

GARAGES	HAIRDRESSERS
(Various regions)	(Various regions)
SERVICES	OTHER INDUSTRIES
Bread distributors	Building materials
Building services	Caskets
Road haulage	Corrugated paper products
Security guards	Flat glass
Solid waste	Furniture
CLOTHING	Non-structural metals
Handbags	Paper boxes
Leather gloves	Petroleum equipment
Men's clothing	Wood working
Millinery	
Shirts	
Women's clothing	

Source: Québec Ministry of Labour, March 1992.

This leads us to a second question: how many employers and wage-earners are bound by these extended agreements? (See table 2). In 1990, the total amount of wages paid to these workers was slightly more than 2.5 million dollars.

TABLE 2

Number of Employers and Workers Covered by Extended Agreements

September 1991

Industry	*Employers**	*Workers*
Clothing	1,347	26,816
Garages	8,929	47,378
Hairdressers	972	92,393
Other industries	3,006	31,329
Services	1,992	32,431
TOTAL	16,246	140,347

* Including artisans (craftsmen).

Source: Québec Ministry of Labour, March 1992.

Juridical Extension

Now that we know who is mainly covered by the system, I will briefly explain in more detail its legal framework, namely: 1) the negotiation of the agreement to be extended; 2) the extension procedure; and 3) the control of the implementation of the decree.

The Negotiation of the Agreement

Since the Act does not define any legal framework for the negotiation of the agreement to be extended, there is no unique model the parties must follow to conduct negotiations and to reach an agreement, as is the case under the *Labour Code* for instance. Under this Act, it varies from one sector to another according to their own collective bargaining tradition. But, most commonly, a sort of two-stage negotiation takes place. First, the unionized firms, the ones with certified unions, usually the largest ones in a given sector, negotiate their collective agreement as they would normally do under the *Labour Code* provisions.

Then a second round takes place on a voluntary basis among the employers and unions that are interested in filing a request with the Minister of Labour to have their agreement extended. They will then determine the content of the agreement that would eventually be binding on all employers and employees within the scope of the agreement. Of course, they will also determine the scope of such an agreement defining the type of activity that will be covered and the geographical area, whether the whole province or just a region within the province.

Most of the time they will include a provision in their collective agreement stipulating that the agreement will become effective only at the date the decree comes into force and, of course, only if the minister recommends to the government the passing of a decree. This is what is called a "conditional agreement" which is a practice that has been developed over the years by the parties to protect themselves in case the minister does not agree to recommend the passing of the decree, or in case he or she introduces changes to the agreement before its extension.

The Juridical Extension Procedure

When the minister receives the petition of the parties and the text of the agreement, they are first both published in the *Gazette officielle du Québec* as well as in a French-language newspaper and an English-language newspaper. The minister will receive any objections (mostly from the third parties) during

a period of thirty days. He or she may order the holding of an inquiry as to whether or not the objections are well-founded.

Then "the minister, if he deems that the provisions of the agreement have acquired a preponderant significance and importance for the establishing of conditions of labour, without serious inconvenience resulting from the competition of outside countries or the other provinces, may recommend the approval of the petition by the Gouvernement [*sic*], with such changes as are deemed expedient, and the passing of a decree for such purpose."[3] The extension is proclaimed by way of a decree (or order-in-council) which is published in the *Gazette officielle du Québec.*

But not all of the provisions of the agreement can be included in the decree. Actually, their number is fairly limited. In fact, only the clauses dealing with the items listed in Table 3 can be included. So, the extended agreement contains no provisions relating to, for example, seniority rights, promotions, transfers, layoffs, maternity leave, sick leave, or grievance procedure. Where the original agreement contains such provisions, these will be binding only on those employers who have signed such an agreement with a certified union. The employers and employees who are not parties to the original agreement but who are covered by the decree will be bound only by the provisions mentioned above.

TABLE 3

Provisions that can be Included in a Decree

Wages
Hours of work
Working days
Vacations with pay
Social security benefit
Classification of operations
Classes of employees and employers
Provisions in conformity with the spirit of the act.*

* *An Act Respecting Collective Agreement Decrees*, R.S.Q., c. D-2, ss 8-9.

The Control of the Implementation of the Decree

The Québec system is also unique in the sense that it makes the parties themselves responsible for ensuring that the decree, which is a legal document, is adhered to by all employers included in its scope of application.

3 *Ibid.*, s. 6.

The first time a given collective agreement is extended, a parity committee is formed, composed of an equal number of representatives of the employers and the unions who have signed the agreement. The minister may add to the committee an equal number of members recommended by employers and employees who are not parties to the agreement. The parity committee is responsible for supervising and ensuring the carrying out of the decree. The committee appoints a general manager, a secretary and a certain number of inspectors, and it will act on behalf of the employees in the enforcement of the decree before the courts.

The operating costs of the parity committee (administration, inspection, court actions) are paid from funds collected from three different sources. The main source is a levy upon employers and employees which "shall not exceed 1/2% of the employee remuneration and 1/2% of the employer's pay-list."[4] The second means of acquiring funds, but which is not always used, resides in the power the committee has "to recover from the employer who violates the provisions of any decree relating to wages a sum equal to 20% of the difference between the obligatory wage and that actually paid."[5] The third source of funds is the stipulation that where someone is found guilty in a penal action, "the fine shall belong in full to the committee."[6]

Even though not provided for in the Act, once a parity committee exists it becomes the natural forum where the negotiations for the renewal of the extended agreement take place. As the parties say in their day-to-day language: they will "renegotiate the decree". That is another reason why some argue that the extension system is a type of multi-employer and, sometimes, multi-union, collective bargaining.

It would be possible to go into much further detail about the functioning of the system, but it is assumed that the foregoing description is sufficient to understand some of the questions and issues that have been put forward in the past few years about the continuation or the modernization or even the abolition of this regime.

A FEW CRITICAL ISSUES

Needless to say, the social actors in Québec are far from unanimous on the issue of the future of this system; moreover their position changes from time to time depending on a variety of events, the implementation of the Free Trade Agreement being just one of them.

4 *Ibid.*, s. 22 (i).
5 *Ibid.*, s. 22 (c).
6 *Ibid.*, s. 52.

At the risk of being accused of misinterpreting their true feelings, I would summarize in the following way the position of the main actors, using the briefs they submitted to the Beaudry Consultative Commission on the Labour Code[7] in 1984 and 1985 as well as the positions some of them have defended more recently at a consultative meeting held by the Minister of Labour on May 5, 1989.[8]

On the employers' side, a certain number of employers' associations are in favour of the abolition of the decree system and, consequently, against any form of multi-employer bargaining or union certification. They consider that the decree system represents a form of state intervention in the field of labour relations which is not acceptable in a free market economy.[9] Others would add that we no longer need such legislation since the *Act Respecting Labour Standards*[10] was amended in 1979 and again in 1990 in such a way that it ensures far better protection for workers than any decree has ever done.

But the most important employers' association in Québec, and the most representative as far as labour relations are concerned, the Conseil du patronat du Québec (C.P.Q.), has adopted a position which is much more subtle. It considers juridical extension as a "lesser evil" when compared with the possibility of multi-employer certification. Nevertheless, there is one element of the decree system to which the C.P.Q. is strongly opposed — "horizontal extension" — which will be explained later in this paper.

On the union side, the position varies slightly from one organization to another. Although they are all in favour, with the exception of the C.E.Q. (Centrale de l'enseignement du Québec), which has never been involved in any manner in the decree system, they are not really enthusiastic about the regime. The C.S.N. considers it "makeshift": even if the Act seems to fulfil some needs in some sectors at the present time, it will never be as useful as real multi-employer bargaining based on industry-wide certification. The F.T.Q. (Fédération des travailleurs et travailleuses du Québec) told the Beaudry Commission that if its main goal is the establishment of multi-employer certification and bargaining, the decree system should be maintained and could even be used to introduce multi-employer bargaining.

---

7 *Le travail: une responsabilité collective*, rapport final de la Commission consultative sur le travail et la révision du code du travail, Les Publications du Québec, 1985, 490 p.

8 *L'administration et l'application de la Loi sur les décrets de convention collective*, compte rendu de la consultation qui s'est tenue le 5 mai 1989 au Grand Hôtel, Montréal, Ministère du travail, Gouvernement du Québec, Juin 1989, 42 p.

9 See the list in Jean BERNIER, *L'extension juridique des conventions collectives au Québec*, rapport réalisé dans le cadre des travaux de la Commission consultative sur le travail et la révision du code du travail (Commission Beaudry), Direction générale des publications gouvernementales, Québec, 1986, 130 p.

10 *Act Respecting Labour Standards*, R.S.Q., c. N-1.1.

Finally, the most enthusiastic defenders of the regime are the members of the various parity committees and the association of their general managers. In their opinion the regime should be maintained because over the years it has allowed the development of the participation of the social actors in the determination of the wages and conditions of work outside the conflictual approach defined in the *Labour Code*. And it is a guarantee of industrial peace. There is a strong belief among some of them that the regime will evolve towards "social concertation" in each industrial sector and the parity committee will then become a front line instrument not only to determine the conditions of work but also to develop professional training and qualification, quality of working life, and other matters.

Whatever position they take on the main issue, the abolition or the defense of the regime, the employers and the unions involved in the system have to face some questions which need to be discussed before we venture, an opinion as to what the future might hold.

There are many different problems relating to the decree system that might be discussed. For instance: Should the discretionary powers of the minister to change the content of the original agreement before he or she recommends its extension be maintained? Should the inquiries the minister holds about the objections be public? Should the studies (mostly on the economic impact of the proposed decree) produced by the Ministry of Labour before recommendation be easily accessible or kept confidential? How efficient are the parity committees in controlling the implementation of the decrees? Is there a risk that some members of a parity committee might find themselves in a situation of conflict of interest? Has this ever happened? Space does not permit all of these questions to be discussed here, so three have been chosen which are quite different in nature and which appear to be of greater significance as regards the issue of broader-based bargaining: the impact of the decrees on unionization; the acute problem of jurisdictional conflicts between parity committees, and between decrees and collective agreements signed under the *Labour Code*; and the extended agreements system and industrial peace.

The Impact on Unionization

The debate over the impact of the decree regime on unionization is as old as the Act itself and as served as fodder for those who are in favour as well as for those who are against the extension of collective agreements.

At the very beginning, there is no doubt that the new Act had a positive effect on unionization. As there could be no decree without a collective agreement and no such agreement without unions, the Act encouraged a certain expansion of unionism. In fact, because of the "unfair" competition argument,

employers in certain industries have been more willing to agree to sign collective agreements knowing that their provisions would be made compulsory for their competitors. But this sort of unanimity is now over. Some argue that the decree system acts as a block on unionization, whereas others argue that, on the contrary, it helps.

Those who feel that the decree system would tend to dissuade workers from joining unions would argue more or less in the following way: why unionize, why take the risk of being fired for union activity, why pay union dues, why take the risk of being on strike or lock-out one day or another, when one can obtain equivalent working conditions without having to pay the cost of unionization? Workers only need to work, wait and see. Fellow workers in unionized shops will negotiate the agreement and the government will extend the benefits of this negotiation to the non-unionized by way of a decree.

On the other hand, those who feel that the decrees have a positive effect on unionization would argue along the following lines. Precisely because of the mechanism of juridical extension, unions are able to find their way into sectors where union density is normally low, i.e. small and medium-size firms. The "unfair" competition argument contributes to make unions more acceptable to these employers. Furthermore, some non-unionized workers might be tempted to join a union when they realize that the conditions of work in the same sector are far better in shops which have signed a complete collective agreement with a certified union.

As interesting as it might be, this problem has not been the subject of much scientific research. In fact, all of those who have tried to conduct this type of research have been faced with many methodological difficulties. Nevertheless, the study conducted by St-Laurent[11] in 1983 deserves to be mentioned because it is the only one that was conducted by way of a questionnaire sent to all parity committees in the province, with a follow-up to ensure the maximum validity of the data. I believe that it is the most reliable study that has been conducted to date. To summarize St-Laurent's main findings, I have produced Table 4 with data drawn from his work.

As one can see, union density is consistently higher in the sectors covered by decrees than in all sectors combined. Second, the decrease in unionization over the period is not significantly more important in the sectors with decrees than in Québec as a whole. From these observations, the least we can say is that it would be hazardous to conclude that the decree system has impeded unionization in these sectors.

---

11 Richard ST-LAURENT, "La syndicalisation dans les secteurs à décrets de convention collective," *Le marché du travail*, Vol. 4, No. 6, 1983, p. 57-60.

TABLE 4

Comparative Union Density in Québec 1974-1981

Year	Sectors with decrees*	All sectors**
1974	59.2%	41.3%
1975	58.9%	38.0%
1976	59.4%	37.0%
1977	58.9%	37.0%
1978	59,6%	36.9%
1979	58.7%	36.4%
1980	56.8%	36.0%
1981	56.3%	38.3%

* Source: Richard St-Laurent, "La syndicalisation dans les secteurs à décrets de convention collective", *Le marché du travail*, Vol. 4, No. 6, 1983, p. 57-60 (Complete questionnaires only).

** Source: F. Delorme and S. Lassonde, *Aspects de la réalité syndicale québécoise — 1976*, Étude et recherches, M.T.M.O., Québec, 1978, p. 3 and A. Parent, "La syndicalisation au Québec", *Le marché du travail*, Vol. 3, No. 6, 1982, p. 4. Reported percentages are functions of paid workers.

But it might be argued that St-Laurent's study is now old, not to say obsolete, and the situation may have changed. So, I have tried to update these figures using the data contained in the annual reports that the parity committees submit to the Québec Ministry of Labour and I have been faced, like many others before, with a methodological problem, namely the validity and reliability of these figures. In fact, the main problem is that in some sectors there is a certain amount of missing data. This situation leads to an underestimation of the real union density in the decree sectors. Nevertheless, it is interesting to present the figures reported in Table 5 (which exclude the garages sector because there were too many files missing). As can be observed, here again, even if union density is underestimated in the decree sectors, it remains higher than in the province as a whole for every year.

The Problem of Jurisdictional Conflicts

As surprising as it might be, it is not unusual that some employers, because of the nature of their activities, have to comply with more than one decree: that is one problem. Furthermore, it can happen that an employer located in a sector that is not covered by a decree, and which has signed a valid

TABLE 5

Comparative Union Density in Québec
1982-1989

Year	Sectors with decrees*	All sectors**
1982	43.2%	37.3%
1983	40.1%	36.3%
1984	49.1%	33.4%
1985	47.4%	44.0%
1986	45.9%	42.4%
1987	42.4%	40.7%
1988	43.1%	41.0%
1989	46.3%	41.2%

* Source: Data collected by the author from the "Annual Reports of the Parity Committees" of the Québec Ministry of Labour (excluding the garages sector because of too many missing data).

** Source: For each year, "Les relations du travail au Québec en [year]", *Le marché du travail*, Vol. 5, No. 1, 1984; Vol. 6, No. 1, 1985; Vol. 7, No. 1, 1986; Vol. 8, No. 2, 1987; Vol. 9, No. 1, 1988; Vol. 10, No. 1, 1989; Vol. 11, No. 12, 1990.

collective agreement with a certified union of its employees under the *Labour Code,* finds itself subject to a decree also.

An example of each of these situations will help to clarify the problem. First, a jurisdictional conflict between two decrees. Let us imagine a situation where a manufacturer produces men's clothing part of the time and women's clothing for the other part (or where some of the personnel work in men's clothing while the rest produce women's clothing). Let us imagine also that the wages and the hours of work are not the same in the two decrees covering these two different sectors. Such an employer would normally have to comply with the decree applicable to each different situation, which means that the wages paid will vary during the day or from one worker to another depending on the type of production. Needless to say, the problem becomes virtually irresolvable when a firm starts producing unisex clothing! We can see also that such circumstances raise the question of the levy for two different parity committees. In fact, this example of the clothing industry is quoted quite often, but it is not the only one. We find situations of this type in other sectors, like woodworking and flat glass. This is a serious problem which is becoming even more acute with the access to new materials (e.g. aluminum or PCV instead of wood) or new technologies and with the development of integration or merger strategies.

The second example illustrates a jurisdictional conflict between a decree and a collective agreement under the *Labour Code*. Take the case of a department store which has signed a collective agreement with a certified union representing all of its personnel and which also happens to operate, on the same premises, a garage providing car maintenance services, minor repairs, etc. If some of the conditions of work defined in the collective agreement are inferior to those set out in the garages decree, the store would be obliged to comply with the decree and be subject to the levy from the parity committee, at least for the workers in the automobile service. The same problem occurred at a textile enterprise which had its own building cleaners and maintenance personnel. This is what is called "horizontal extension".

In both cases, these jurisdictional conflicts are caused by the fact that section 11 of the Act still provides that "the decree [...] shall govern and rule any work of the same nature or kind as that contemplated by the agreement." We can see here an example of the heritage of the era of craft unions. Many representatives of the parties believe that the scope of a decree should be defined in terms of industrial sectors instead of the "kind of work" that is being done.

The Extended Agreements System and Industrial Peace

The most ardent defenders of the decree system used to say that the regime "deserves" to be maintained because it promotes industrial peace in the sectors covered by decrees. They argue that the existence of the parity committee stimulates a positive and constructive dialogue between the representatives of the parties which makes easier the negotiation of the renewal of the agreement. It creates a climate of union-management cooperation that facilitates "social concertation". If this is true, one would expect that this attitude would have an impact on the strike or lock-out activity in the sectors governed by decrees.

This problem had not been examined in detail until a recent research study conducted by Benoît Lyrette and presented in a paper delivered at the C.I.R.A. Conference at Queen's University in June 1991. For the purpose of this paper, I would like to quote the abstract published in the Proceedings[12] of the said Conference (p. 335), even though the study considered only the strikes and lock-outs that have occurred in manufacturing and not in the services:

> Using a cross sectional analysis of 67 manufacturing activities (three digit classification) in Québec, and considering 675 work stoppages which have occurred for a renewal between 1980 and 1988, our findings suggest that the "régime des

12 Benoît LYRETTE and Paul-Martel ROY, "Le régime des décrets favorise-t-il la paix industrielle?" *Proceedings of the 28th Conference of the Canadian Industrial Relations Association*, Queen's University, Kingston, 1991, p. 327-335.

décrets'' has a significant impact on strike activity. Contrary to what has been stated until now according to descriptive statistical methods, we found that the ''régime'' increases strike activity. This increase has been found for both the equation using the incidence (number of strikes per thousand employees) or the intensity (number of working days lost per employee). Briefly stated, the measure of the strike and the explanatory variable taking into account the fact that a decree is in force in a manufacturing activity, are positively and significantly related, everything else being held constant.

CONCLUSION

Despite these difficulties and some others — like the complete lack of harmonization or coordination between this old law of 1934, on the one hand, and more recent ones like the *Act Respecting Labour Standards* (1979 and 1990) and the *Labour Code,* on the other — the system still operates, and, most likely, to the satisfaction of the parties directly involved in its day-to-day functioning. But it appears more and more marginal, operating in a sort of a ''closed circle'' still carrying the ideology of corporatism which inspired its creators in the early 1930's. The figures presented at the beginning of this paper tend to confirm this view. The number of workers covered by the decrees has remained more or less stable for the past twenty years or so, i.e. around 140,000, which represents only 6% of the wage-earners in Québec and 12% of the hourly-paid workers.

As we have seen, the decree system does not seem to function as a disincentive to unionization, but there were no significant increases either and, finally, it is not at all evident that it helps industrial peace as much as some would like to pretend. The least we can say is that this whole system has been stagnant for much more than twenty years, despite the fact that new sectors have been covered. In this context, is there still a place for a system of extended agreements in Québec? As I wrote in 1985: The existing system has grown long in the tooth.[13] For instance, since 1985, at least eleven decrees out of forty-four have not been renewed or have been repealed in sectors like hairdressing (some regions), garages (some regions), fur (retail and wholesale), musicians, and metallurgy. But I personally believe that there is a future for a system of extended agreements in Québec.

First, I realize that the actors who are most involved in the system are quite satisfied with a regime of juridical extension which seems to serve the interests of both employers and workers. It has been part of the tradition of labour relations in Québec for many years. Second, the most important employers' association (C.P.Q.) and the large workers' organizations in the

13 See BERNIER, *supra*, note 8, p. 78-79.

private sector (C.S.N., F.T.Q. and C.S.D.) are not opposed to a regime of extended collective agreement even if they are not very enthusiastic and might have different views on the extent this system should have, as I mentioned earlier. I am not suggesting here that they would agree with the system I will propose in the following paragraphs, nor am I in any way suggesting that what I consider good for Québec would be relevant elsewhere.

I am not at all sure that the simple abolition of the present system would serve the best interests of workers, unions and employers. Even if it can not be said that the present system has been of much help in fostering unionization, I think that the abolition of all possibilities of extended agreements could contribute to a decrease in unionization in small and medium-size firms. I think also that this could lead to greater intervention by the state by way of direct regulation of the conditions of work, as happened in the past when the decree in force in retail food stores was not renewed and was replaced by an *Order Respecting the Retail Food Trade* administered by the "Commission des normes du travail."[14]

Thus, I believe that there is a place in Québec for extended collective agreement. But it would have to be a new one, a modernized one, which would retain the essence of the past, from this tradition of extended agreements which characterizes the Québec labour relations system, but would also contain some new or different features to make necessary adjustments to the situation of the 1990's.[15]

1- It would be integrated into the *Labour Code* where we would find two types of collective agreements, the "usual" ones signed with the certified unions, as already exists, and the "extendible" ones which could be negotiated on a voluntary basis by groups of employers and unions (or groups of unions) which have already signed a collective agreement and are interested in having some provisions of it extended to other firms and employees.

2- They would be allowed to negotiate this extendible agreement during the first round of negotiations or, if they wish, in a two-round negotiation process.

3- The content of the extendible agreement would be far wider than it is now. Virtually any provision of the agreement could be extended with only a few exceptions (see next paragraph). For instance, the decree system and the parity committees could play an important role in the development and administration of all sorts of complementary social benefit

14 In French in the English version of the Act.

15 For a fuller description of that system, see BERNIER, *supra*, note 8, p. 79-101.

plans.[16] These could include complementary pension plans, health care insurance, and other plans which are difficult to introduce in small firms.

4- Clauses relating to union security and union check-off as well as other provisions concerning the union as such, should not be extended. I think that if such clauses were included in a decree this would become unionization imposed by direct state intervention through the mechanism of extension. Such a practice appears contrary to the I.L.O. convention concerning freedom of association and I am not sure that this is precisely the type of unions our workers' organizations would like.

5- But any worker, in a non-unionized shop covered by the extended agreement, who would like to join the union could do so on a voluntarily basis and benefit from the protection provided by the *Labour Code* in case of unfair labour practices. He or she would also be entitled to voluntary check-off.

6- The scope of the extended agreement should be determined by the parties but it should be defined in terms of industrial sector and no longer in terms of the type of work done.

7- The inquiry held by the minister should be public.

8- The minister should no longer possess the discretionary power of changing some provisions of the agreement before he or she recommends extension. The procedure should make him or her more respectful of the will of the parties expressed in the extendible agreement. If the minister believes that it would not be in the public interest to proceed to the extension of the agreement as written, he or she should be entitled to refuse and to explain the reasons for this decision to the parties. If they wish to have the agreement extended, the parties would be free to make the changes themselves or to simply withdraw their request.

9- An employer should never be subject to two decrees, or to a collective agreement and a decree. If an employer has signed an agreement with a certified union, no decree could be imposed on that employer even if some conditions of the decree are more favourable to the workers. And in case of mixed production, or conflict between two decrees, there should be some criteria (e.g. the main production activity, or the value of the main production or the number of workers employed in the main activity of the firm)[17] to determine which decree is applicable.

---

16 There are very interesting experiences in some foreign countries who have used the technic of the juridical extension to develop complementary social benefit plans. See BERNIER, *ibid.*

17 Here again, experience of some foreign countries could be helpful because this problem is common to most systems of juridical extension.

10- The control and supervision of the implementation of the extended agreement would no longer be the responsibility of a parity committee because there would be too high a risk of conflict of interest (as demonstrated in a certain number of inquiries and testimonies at the Beaudry Commission) and also because of the high cost of this type of control if we compare it with the "Commission des normes du travail" in implementing the *Act Respecting Labour Standards.*[18] I must also add that in some respects there is an inequality of rights between the workers covered only by the *Act Respecting Labour Standards* and those covered by both Acts.[19] The control could be done by two different means: unions could represent all their members, even in non-unionized shops before the courts; the "Commission des normes du travail" would be empowered to look after the implementation of the extended agreements and recommend court action where necessary.

The Beaudry Commission integrated most of these suggestions into its recommendations.[20] But no employers' associations or workers' organization has made their position officially known about these suggestions. And the government has not yet decided if it is going to maintain, modify or abolish the system. My goal in this paper has been simply to discuss some of the issues which will need to be tackled in a broader consideration of the difficulty of developing collective bargaining in small and medium-size firms in highly competitive markets.

BIBLIOGRAPHY

BERNIER, Jean, *L'extension juridique des conventions collectives au Québec*, rapport réalisé dans le cadre des travaux de la Commission consultative sur le travail et la révision du code du travail (Commission Beaudry), Direction générale des publications gouvernementales, Québec, 1986, 130 p.

BERNIER, Jean, "L'extension juridique des conventions collectives au Québec: une approche comparative," *Relations industrielles/Industrial Relations*, Vol. 38, No. 3, 1983, p. 532-544.

BERNIER, Jean, "L'extension des conventions collectives de travail dans le droit du travail de la France, de la Grande-Bretagne et du Canada," *Relations industrielles/ Industrial Relations*, Vol. 24, No. 1, 1969, p. 141-163.

BERNIER, Jean, "L'approche comparative appliquée à l'étude de la négociation élargie et de l'extension juridique des conventions collectives: son intérêt et ses limites," *Les négociations élargies*, Rapport de la journée d'études de novembre 1982 de la Corporation professionnelle des Conseillers en relations industrielles du Québec,

18 See BERNIER, *supra*, note 8, p. 41-42 and 71-77.

19 *Ibid.*, p. 17-18.

20 *Le travail: une responsabilité collective*, *supra*, note 6, p. 213-228.

Document de travail n° 5, École de relations industrielles, Université de Montréal, 1982, p. 25-89.

BERNIER, Jean, "Le rapport Beaudry et l'extension juridique des conventions collectives," Communication présentée le 23 mai 1986 au Congrès scientifique annuel de la Corporation professionnelle des Conseillers en relations industrielles du Québec, sur *L'avenir de la loi des décrets* (not published).

DELORME, F., and S. LASSONDE, *Aspects de la réalité syndicale québécoise — 1976*, Études et recherches, M.T.M.O., Québec, 1978, p. 3.

DUBÉ, Jean-Louis, *Décrets et comités paritaires*, Les édititions Revue de Droit, Université de Sherbrooke, 1990, 376 p.

LYRETTE, Benoît, and Paul-Martel ROY, "Le régime des décrets favorise-t-il la paix industrielle?" *Proceedings of the 28th Conference of the Canadian Industrial Relations Association*, Queen's University, Kingston, 1992, p. 327-335.

PARENT, A., "La syndicalisation au Québec," *Le marché du travail*, Vol. 3, No. 6, 1982, p. 4.

ST-LAURENT, Richard, "La syndicalisation dans les secteurs à décrets de convention collective," *Le marché du travail*, Vol. 4, No. 6, 1983, p. 57-60.

——— *Le travail une responsabilité collective*, rapport final de la Commission consultative sur le travail et la révision du code du travail, Québec : Les Publications du Québec, 1985, 490 p.

——— *L'administration et l'application de la Loi sur les décrets de convention collective*, compte rendu de la consultation qui s'est tenue le 5 mai 1989 au Grand Hôtel, (Montréal), Ministère du travail, Gouvernement du Québec, Juin 1989, 42 p. (unpublished).